

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LUCAS CALIXTO, *et al.*,

Plaintiffs,

v.

Civil Action No. 18-1551 (ESH)

UNITED STATES DEPARTMENT OF  
THE ARMY, *et al.*,

Defendants.

**ORDER**

It is hereby

**ORDERED** that defendants shall file a sur-reply regarding plaintiffs' motion for class certification, ECF No. 62, of no more than 10 pages by **June 10, 2019, at 12 p.m.**, addressing the following for **proposed sub-class 2** (i.e., putative class members discharged for non-MSSD reasons):

1. Defendants shall identify the specific regulations that defendants allege apply to discharges of DTPs and DEPs, and the specific ways in which the substance of the required discharge procedures for each group differ, if at all.
  - a. If defendants argue that the discharge procedures meaningfully differ for DTPs and DEPs, defendants should address, for example, why a DEP soldier who under AR 135-178 ¶ 14-7 appears to be entitled to the notification procedure outlined in chapter 3, sec. II of AR 135-178 should not be in the same class as a DTP soldier discharged for entry level performance and conduct, who under AR 135-178 ¶ 8-4

also appears to be entitled to the notification procedure outlined in chapter 3, sec. II of AR 135-178.

2. Since defendants argue that differences among putative class members in the reasons for their discharge should prevent class certification (Defs.' Opp. to Mot. for Class Cert. at 26–27, ECF No. 89), defendants shall identify the specific regulations that defendants allege apply to discharges of MAVNI soldiers for *each* “basis for discharge” category listed on ECF No. 27-2, and the specific ways in which the substance of the required discharge procedures differ for each discharge category, if at all.
3. Is it defendants' position that each MAVNI soldier discharged for non-MSSD reasons, including but not limited to those listed on ECF No. 27-2, received the procedures required by the applicable regulations?



*Ellen S. Huvelle*

ELLEN S. HUVELLE  
United States District Judge

Date: May 24, 2019